

***HOUSE ENVIRONMENT, ENERGY & TECHNOLOGY
ADMINISTRATIVE RULES REVIEW***

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2007 Legislative Session

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HOUSE ENVIRONMENT, ENERGY & TECHNOLOGY

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0303 (FEE RULE)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-ninth Idaho Legislature if the rule is approved by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 6, 2006, Vol. 06-9, pages 219 through 223. The agency received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/air/58_0101_0303_pending.cfm or by contacting the undersigned.

FEE SUMMARY: This rulemaking revises the annual assessment and payment of Title V fees. Collection of the fees is authorized by Sections 39-115(3), 39-118D and 39-119, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: DEQ will request an additional \$100,000 to be appropriated in the general fund to cover other agency air quality actions, previously paid for with Title V fees, though not specifically required by federal law.

IDAHO CODE 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440, martin.bauer@deq.idaho.gov.

Dated this 16th day of November, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that

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DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for the Control of Air Pollution in Idaho

Docket No. 58-0101-0303
PENDING RULE

this agency has proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rulemaking will be held as follows:

October 10, 2006, 3:00 p.m.
Department of Environmental Quality Conference Center
1410 N. Hilton, Boise, Idaho

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: In accordance with IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho, the Department of Environmental Quality (DEQ) is required to review the Title V air quality operating permit registration fees set out in Subsection 389.06 every two years to assure the funds meet the presumptive minimum amount as defined by the U.S. Environmental Protection Agency. Payment of the Title V permit program costs by a fee is mandated by the Clean Air Act. By federal law, the state of Idaho cannot maintain primacy for the Title V program unless it collects fees sufficient to cover all reasonable direct and indirect costs required to administer the program. This rule will increase fees for the sources subject to the Title V program by approximately \$400,000. During the first few years that DEQ began administering the program, the fees were assessed on permit allowable, not actual, emissions, and thus a surplus of fees was collected. In previous years, DEQ was able to use that surplus to cover costs incurred above those collected in fees. The Title V fund is now diminished to a point that DEQ must raise fees to ensure all direct and indirect costs of the Title V program are covered.

The text of this rule was developed by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule, including industry representatives and special interest groups. All regulated sources of air emissions that fall within the scope, or may fall within the scope, of Title V of the Clean Air Act are affected by this rulemaking. In addition, special interest groups, public officials, or members of the public who have an interest in the air quality in Idaho may wish to comment on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2006 for adoption of a pending rule. The rule is expected to be final and effective upon the adjournment of the 2007 legislative session if adopted by the Board and approved by the Legislature.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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FEE SUMMARY: This rulemaking revises the annual assessment and payment of Title V fees. Collection of the fees is authorized by Sections 39-115(3), 39-118D and 39-119, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: DEQ will request an additional \$100,000 to be appropriated in the general fund to cover other agency air quality actions, previously paid for with Title V fees, though not specifically required by federal law.

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, November 5, 2003, Vol. 03-11, page 88.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440, martin.bauer@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before October 10, 2006.

DATED this 4th day of August, 2006.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

389. REGISTRATION INFORMATION.

Any person owning or operating a facility or source during the previous calendar year or any portion of the previous calendar year for which Sections 387 through 397 apply shall, by April 1; ~~2003 or within fifteen (15) days following the adjournment of the 2003 regular session of the legislature, whichever is later, and each April 1 thereafter~~ of each year, register with the Department and submit the following information ~~as specified in Subsections 389.01 through~~

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~~389.05~~ (submittal forms are located at www.deq.idaho.gov): ~~(4-11-06)~~(____)

01. Facility Information. The name, address, telephone number and location of the facility; (5-1-94)

02. Owner/Operator Information. The name, address and telephone numbers of the owners and operators; (5-1-94)

03. Facility Emission Units. The number and type of emission units present at the facility or the Tier I permit number for the facility; and (4-2-03)

04. Pollutant Registration. The actual emissions from the previous calendar year for oxides of sulfur (SO_x), oxides of nitrogen (NO_x), particulate matter (PM₁₀), and volatile organic compounds (VOC) calculated using methods to include, but not limited to, continuous emissions monitoring (CEMS), certified source tests, material balances (mass-balance), state/industry emission factors, or AP-42 emission factors applied to throughput, actual operating hours, production rates, in-place control equipment, or the types of materials processed, stored, or combusted. ~~(4-11-06)~~(____)

05. Radionuclide Registration. The amount of radionuclides from facilities regulated under 40 CFR Part 61, Subpart H, for which the registrant wishes to be registered to emit from each source in curies per year except that no amount in excess of or less than an existing permit, consent order, or judicial order will be allowed. (5-1-94)

390. REGISTRATION FEE.

~~06. Regulated Air Pollutant Registration Fee.~~ *The* This registration fee ~~set out in Subsection 389.06~~ structure shall be reviewed at least every two (2) years to assure the funds meet the presumptive minimum as defined by EPA. The annual registration fee ~~set forth in Section 389~~ as determined in Section 390 shall be paid as provided in Section 393. ~~(4-2-03)~~(____)

~~01.~~ **Tier I Annual Fee.** The Tier I annual fee schedule shall be as follows: ~~(3-30-01)~~(____)

~~i.~~ **a.** A fixed annual fee for Tier I major sources emitting regulated air pollutants listed in Subsection 389.04 as follows: (4-2-03)

~~(1)i.~~ Seven thousand (7,000) tons per year and above shall pay ~~fifty-five thousand dollars (\$55,000)~~ seventy-one thousand five hundred dollars (\$71,500); ~~(4-2-03)~~(____)

~~(2)ii.~~ Four thousand five hundred (4,500) tons per year and above shall pay ~~thirty-three thousand dollars (\$33,000)~~ forty-two thousand nine hundred dollars (\$42,900); ~~(4-2-03)~~(____)

~~(3)iii.~~ Three thousand (3,000) tons per year and above shall pay ~~twenty-two thousand dollars (\$22,000)~~ twenty-eight thousand six hundred dollars (\$28,600); ~~(4-2-03)~~(____)

~~(4)iv.~~ One thousand (1,000) tons per year and above shall pay ~~seventeen thousand five hundred dollars (\$17,500)~~ twenty-two thousand seven hundred fifty dollars (\$22,750);

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(4-2-03)(____)

(5)v. Five hundred (500) tons per year and above shall pay ~~eight thousand five hundred dollars (\$8,500)~~ eleven thousand fifty dollars (\$11,050); (4-2-03)(____)

(6)vi. Two hundred (200) tons per year and above shall pay ~~five thousand five hundred dollars (\$5,500)~~ seven thousand one hundred fifty dollars (\$7,150); and (4-2-03)(____)

(7)vii. Less than two hundred (200) tons per year shall pay ~~two thousand seven hundred fifty dollars (\$2,750)~~ three thousand five hundred seventy-five dollars (\$3,575); plus (4-2-03)(____)

#b. A per ton annual fee of ~~thirty-three dollars (\$33)~~ thirty-nine dollars and forty-eight cents (\$39.48) per ton for all regulated air pollutant emissions listed in Subsection 389.04 as follows: (4-2-03)(____)

(4)i. Greater than or equal to four thousand five hundred (4,500) tons per year not to exceed ~~one hundred ten thousand dollars (\$110,000)~~ one hundred forty-three thousand dollars (\$143,000); (4-2-03)(____)

(2)ii. Greater than or equal to three thousand (3,000) but less than four thousand five hundred (4,500) tons per year not to exceed ~~fifty-five thousand dollars (\$55,000)~~ seventy-one thousand five hundred dollars (\$71,500); (4-2-03)(____)

(3)iii. Greater than or equal to one thousand (1,000) but less than three thousand (3,000) tons per year not to exceed ~~twenty-seven thousand dollars (\$27,000)~~ thirty-five thousand one hundred dollars (\$35,100); (4-2-03)(____)

(4)iv. Greater than or equal to five hundred (500) but less than one thousand (1,000) tons per year not to exceed ~~nineteen thousand two hundred fifty dollars (\$19,250)~~ twenty-five thousand twenty-five dollars (\$25,025); (4-2-03)(____)

(5)v. Greater than or equal to two hundred (200) but less than five hundred (500) tons per year not to exceed ~~eight thousand two hundred fifty dollars (\$8,250)~~ ten thousand seven hundred twenty-five dollars (\$10,725); and (4-2-03)(____)

(6)vi. Less than two hundred (200) tons per year not to exceed ~~two thousand seven hundred fifty dollars (\$2,750)~~ three thousand five hundred seventy-five dollars (\$3,575). (4-2-03)(____)

#02. Fee-for-Service. The fee-for-service shall be as follows: Sources requesting Section 300 permit modifications or renewals, or receiving program maintenance services, including but not limited to site visits, response to public inquiries, modeling, responses to site questions and opacity readings by the Department shall be assessed a fee for actual time expended and expenses incurred by the Department in the previous calendar year in an amount not to exceed ~~seven thousand five hundred dollars (\$7,500)~~ twenty thousand dollars (\$20,000) per facility per year as a fee-for-service. Service shall be conducted by qualified Department staff or contractors. (4-2-03)(____)

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~~07. **Shortfall.** In the event that, on June 30, 2003 or June 30, 2004 the amount of fees assessed by the Department under Subsection 389.06.a. is less than one million one hundred thousand dollars (\$1,100,000), the difference shall be paid by the registrants to which Section 388 applies.~~ (4-2-03)

~~a. The shortfall will be calculated as follows:~~ (4-2-03)

~~i. Dividing the amount of the shortfall by the total tons of pollutants registered for the previous calendar year by all registrants; and~~ (4-2-03)

~~ii. Calculating a per-ton fee which, when multiplied by the total tons registered generates a number in the amount of the shortfall.~~ (4-2-03)

~~b. Each registrant shall then be assessed by September 1 of the year and shall pay by October 1 of the year a supplemental fee to make up any shortfall of the one million one hundred thousand dollars (\$1,100,000) in the amount of the tons of emissions registered for that facility in the previous calendar year multiplied by the per-ton fee calculated in Subsection 389.07.a.~~ (4-2-03)

~~c. Subsection 389.07 of this rule shall apply only in state fiscal years 2004 and 2005.~~ (4-2-03)

083. Radionuclide Registration Fee. (4-2-03)

a. A registration fee of five dollars per curie per year (\$5/curie/year) shall be paid by facilities regulated under 40 CFR Part 61, Subpart H. (4-2-03)

b. The registration fee may be paid as provided in Section 397. (4-2-03)

3901. REQUEST FOR INFORMATION.

Any additional information, plans, specifications, evidence or documents that the Department may require to make the determinations required under Sections 387 through 397 shall be furnished on request. (4-2-03)

3912. REGISTRATION FEE ASSESSMENT.

All facilities to which Sections 387 through 397 apply shall pay to the Department an annual registration fee as required by Section 3890. The Department shall determine the fee based on the information supplied by the registrant and the Department's analysis of information available. In the event of a failure of a facility to submit pertinent registration information, the Department may calculate the fee and shall assess the facility the fee and the costs of calculating the fee. (4-2-03)

~~392. REGISTRATION FEE ASSESSMENT.~~

~~No later than May 215, 2003, and of each May 15 thereafter year, or within fifteen (15) days following the adjournment of the regular session of the Idaho State Legislature, whichever is later, the Department shall send to each registrant, to which Sections 387 through 397 apply, by certified mail, an assessment of the annual fee payable by the registrant.~~ (4-2-03)(____)

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393. PAYMENT OF TIER I REGISTRATION FEE.

01. Fee Payment Date. The registration fee shall be paid to and received by the Department no later than July 1 of each year, or within forty-five (45) days following the receipt of the registration fee assessment in Section 392, whichever is later. Checks should be made payable to "Department of Environmental Quality." (4-2-03)(____)

02. Fee ~~Materials~~ Payments Mailing Address. All ~~registration and~~ fee ~~materials~~ payments should be sent to:

Air Quality Tier I Registration Fees
Idaho Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255

(4-2-03)(____)

(BREAK IN CONTINUITY OF SECTIONS)

395. APPEALS.

Persons may file an appeal within thirty-five (35) days of the date the person received an assessment issued under ~~Subsection 389.07 or~~ Section 392. The appeal shall be filed in accordance with IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (4-2-03)(____)

(BREAK IN CONTINUITY OF SECTIONS)

397. LUMP SUM PAYMENTS OF REGISTRATION FEES.

01. Agreement. The Department may, in its discretion, enter an agreement with any person for the lump sum payment of all, or any addition to, the registration fees required by Section 3890. (4-2-03)(____)

02. Minimum Amount. The minimum amount for any lump sum agreement shall be three hundred thousand dollars (\$300,000). (5-1-94)

03. Payment Waiver. Upon the execution and full performance of the agreement by the person, the Department shall waive the payment requirements of Section 3890. All other provisions of Sections 387 through 397 shall remain applicable to the person. (4-2-03)(____)

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IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.12 - RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

DOCKET NO. 58-0112-0501 (FEE RULE)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: The amendment to the temporary rule was effective February 24, 2006. This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-ninth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that the Board has adopted a pending rule and amended a temporary rule. This action is authorized by Title 39, Chapters 1 and 36, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

In November 2005 the Board adopted a temporary rule allowing DEQ to collect a fee in the form of a percentage of each loan. The fees collected will be used to provide funds for loan program administration. The actual interest rate charged on State Revolving Fund (SRF) loans will be reduced by the corresponding percentage of the fee charged so that there is no cost to the communities using the SRF loans. In January 2006, DEQ published the temporary/proposed rule, inviting the public to comment on the rule. Idaho Administrative Bulletin, January 4, 2006, Vol. 06-1, pages 315 through 321. No public comments were received. Prior to adoption of the pending rule, the Board made a minor revision to Subsection 032.03 for clarification purposes, and the temporary rule has been amended accordingly. The remaining sections have been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov or by contacting the undersigned.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section Title 39, Chapters 1 and 36, Idaho Code.

Unless this fee is implemented in FY 2006, the Department of Environmental Quality (DEQ) anticipates running out of funds necessary to administer the State Revolving Fund (SRF) by the end of FY 2006 and not being able to make loans for improvements to wastewater treatment facilities. In 2004 the Idaho Legislature added a provision for funding administration to Section 39-3626, Idaho Code; however, EPA has determined that the provision conflicts with the Clean Water Act's restrictions on fund interest earnings specified in 33 Section U.S.C. 1383(d)(1)(D) and the authorized types of assistance in 33

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Section U.S.C. 1383(d)(7). Therefore DEQ cannot use interest earned on loans to fund administration of the SRF loan program beyond the amount specified in the Clean Water Act. The agency is left with either requesting additional state general funds or adopting a loan balance fee to maintain the loan program. Imposition of the fee is authorized by Sections 39-119 and 39-3627(4), Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE SECTION 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact Bill Jerrel at william.jerrel@deq.idaho.gov, (208)373-0400.

Dated this 23rd day of February, 2006.

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective January 4, 2006.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality (DEQ) is commencing proposed rulemaking. This action is authorized by Title 39, Chapters 1 and 36, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before January 18, 2006. If no such written request is received, a public hearing will not be held.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: Administration of the loan program is currently paid for by a 4% set-aside from the federal capitalization grants that DEQ receives from the U.S. Environmental Protection Agency (EPA). Federal capitalization grants have decreased substantially over the last few years thereby reducing the funding available from the set-aside to administer the loan program. The amount available from the set-aside each year is

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no longer sufficient to fund DEQ's administrative costs for the year. This creates a dilemma for DEQ because, while the EPA grant funds available for administering the State Revolving Fund (SRF) are diminishing, the amount of funds available for loans is growing due to the increasing dollar amount of loan repayments each year. The work load to issue new loans is increasing as the SRF funds increase.

The purpose of this rulemaking is to revise the Rules for Administration of Water Pollution Control Loans to allow DEQ to collect a fee in the form of a percentage of each loan. The fees collected will be used to provide funds for loan program administration. The actual interest rate charged on SRF loans will be reduced by the amount of the fee charged so that there is no cost to the communities using the SRF loans. Cities, counties, districts and associations that own and operate public wastewater treatment systems may be interested in participating in this rulemaking.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality for adoption of a pending rule in February 2006. The pending rule will become final upon the conclusion of the 2007 session of the Idaho Legislature if approved by the Legislature.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is necessary to protect public health. In addition, the Governor has found that the fee imposed in this rule meets the criteria set out in Section 67-5226(2), Idaho Code. Unless this fee is implemented in FY 2006, DEQ will run out of funds necessary to administer the SRF by the end of FY 2006 and will not be able to make loans for improvements to wastewater treatment facilities. In 2004 the Idaho Legislature added a provision for funding administration to Section 39-3626, Idaho Code; however, EPA has determined that the provision conflicts with the Clean Water Act's restrictions on fund interest earnings specified in 33 Section U.S.C. 1383(d)(1)(D) and the authorized types of assistance in 33 Section U.S.C. 1383(d)(7). Therefore DEQ cannot use interest earned on loans to fund administration of the SRF loan program. The agency is left with either requesting additional state general funds or adopting a loan balance fee to maintain the loan program. Imposition of the fee is authorized by Section 39-119 and 39-3627(4), Idaho Code.

FEE SUMMARY: Unless this fee is implemented in FY 2006, DEQ will run out of funds necessary to administer the SRF by the end of FY 2006 and will not be able to make loans for improvements to wastewater treatment facilities. In 2004 the Idaho Legislature added a provision for funding administration to Section 39-3626, Idaho Code; however, EPA has determined that the provision conflicts with the Clean Water Act's restrictions on fund interest earnings specified in 33 Section U.S.C. 1383(d)(1)(D) and the authorized types of assistance in 33 Section U.S.C. 1383(d)(7). Therefore DEQ cannot use interest earned on loans to fund administration of the SRF loan program. The agency is left with either requesting additional state general funds or adopting a loan balance fee to maintain the loan program. Imposition of the fee is authorized by Section 39-119 and 39-3627(4), Idaho Code.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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DEPARTMENT OF ENVIRONMENTAL QUALITY Docket No. 58-0112-0501 (Fee Rule)
Rules for Administration of Water Pollution Control Loans **PENDING RULE**

IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, October 5, 2005, Vol. 05-10, pages 711 through 712.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the temporary and proposed rule, contact Bill Jerrel at william.jerrel@deq.idaho.gov, (208)373-0400.

Anyone may submit written comments regarding this proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before February 1, 2006.

DATED this 16th day of November, 2005.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton/Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

005. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (12-31-91)

01. Best Management Practice. A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the most cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality needs. (3-30-01)

02. Board. The Idaho State Board of Environmental Quality. (12-31-91)

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03. Categorical Exclusion (CE). Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. (5-3-03)

04. Close or Closing. The date on which the borrower issues and physically delivers to the Department the bond or note evidencing the loan to the borrower, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. (1-4-06)T

045. Collector Sewer. That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. (1-1-89)

056. Construction. The erection, building, acquisition, alteration, reconstruction, improvement or extension of wastewater treatment facilities, including preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary in the construction of wastewater treatment facilities; the inspection and supervision of the construction; and for projects funded with federal moneys the costs incurred during the one (1) year project certification period. (1-1-89)

067. Department. The Idaho Department of Environmental Quality. (1-1-89)

078. Director. The Director of the Idaho Department of Environmental Quality or his/her designee. (5-3-03)

089. Eligible Applicant. A municipality or nonpoint source project sponsor which has the ability to establish and maintain a loan repayment source. Individuals and for-profit corporations are not eligible. (3-30-01)

0910. Eligible Costs. Costs which are necessary for planning, designing and/or constructing wastewater treatment facilities or implementation of water pollution control projects. To be eligible, costs must be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)

101. Environmental Information Document (EID). Any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed wastewater construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (5-3-03)

112. Environmental Impact Statement (EIS). A document prepared by the grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook when the Department determines that the proposed construction project will significantly affect the environment as described in Appendix C of the Handbook. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either

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avoided or mitigated. (5-3-03)

123. Facility Plan. Systematic evaluation by a professional engineer of feasible treatment alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the scheduled alternative is cost effective. (5-3-03)

134. Financial Management System. Uniform method of recording, summarizing and analyzing financial information about the water pollution control loan applicant. (3-30-01)

145. Finding of No Significant Impact (FNSI). A document prepared by the Department briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. (5-3-03)

156. Handbook. "Wastewater Facilities Loan Account Handbook of Procedures." (5-3-03)

167. Implementation Plan. Completed project implementation plan or work plan provides detailed documentation of the proposed project including list of tasks, schedule of tasks, agency/contractor/entity responsible for implementation of the project tasks, adequate time schedules for completion of all budget tasks, and the anticipated results of the project. (3-30-01)

178. Ineligible Costs. Costs which are described in Section 041.05. (5-3-03)

189. Interceptor Sewer. That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. (1-1-89)

192. Municipality. Any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project. (3-30-01)

201. National Pollutant Discharge Elimination System. Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). (3-30-01)

212. Nondomestic Wastewater. Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (5-3-03)

223. Nonpoint Source Pollution. Water pollution that comes from varied, nonspecific, and diffuse sources and can be associated with the general land disturbing activity that causes the pollution. (3-30-01)

234. Nonpoint Source Project Sponsor. Any county, city, special service district,

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nonprofit corporation, or other governmental entity, or a combination thereof. (3-30-01)

245. O & M Manual. For wastewater treatment facilities, a guidance and training manual outlining the optimum operation and maintenance of the wastewater treatment facility or its components. For nonpoint source water pollution control projects, a plan that incorporates applicable sections of the Natural Resources Conservation Service Field Office Technical Guide, for implementation of best management practices. (3-30-01)

256. Plan of Operation. A schedule of specific actions and completion dates for construction, start-up and operation of the wastewater treatment facility or for implementation of water pollution control projects. (5-3-03)

267. Point Source. Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (3-30-01)

278. Pollutant. Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses. (1-1-89)

289. Priority List. An integrated list of proposed wastewater treatment facility and nonpoint source pollution control projects rated as described in Section 020. (5-3-03)

2930. Rehabilitation. The repair or replacement of limited segments of interceptor or collector sewers. (5-3-03)

301. Reserve Capacity. That portion of the treatment works that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings. (1-1-89)

342. Sewer Use Ordinance. An ordinance adopted pursuant to Title 42, Chapter 32, Idaho Code, or other applicable law which requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. (1-1-89)

323. State. The state of Idaho. (12-31-91)

334. Supplemental Grants. A grant awarded to a municipality in conjunction with a loan from the water pollution control loan account. (3-30-01)

345. Suspension. An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (1-1-89)

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356. Unified Watershed Assessment. Federal watershed assessment that encompasses the State list of impaired waters. (3-30-01)

367. Termination. An action by the Director to permanently terminate a loan contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (1-1-89)

378. User Charge System. A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the installed equipment or structures. (3-30-01)

389. Wastewater. A combination of the liquid and water-carried wastes from dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. (1-1-89)

3940. Wastewater Treatment Facility. Any facility, including land, equipment, furnishings and appurtenances thereof, used for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater including the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems, land disposal systems; a sewage treatment plant. (1-1-89)

401. Water Pollution Control Project. Any project that contributes to the removal, curtailment, or mitigation of pollution of the surface waters or groundwater of the state, or the restoration of the quality of said waters, and conforms to any applicable planning document which has been approved and/or adopted such as the State Water Quality Management Plan. This includes the planning, design, construction/implementation or any other distinct stage or phase of a project. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

032. LOAN FEE.

01. Loan Fee. The Department may elect to impose a loan fee when necessary to offset the costs of administering the loan program. The Department may impose a loan fee on loans scheduled to close after January 4, 2006. The loan fee shall not exceed one percent (1%) of the unpaid balance of the loan at the time each loan payment is due. (1-4-06)T

02. Determination of Loan Fee. The Department shall determine the amount of the loan fee on a yearly basis and shall charge the same loan fee on all loans closed during any one fiscal year. The amount of the loan fee shall be included in the Intended Use Plan, as described by Section 606(c) of the Clean Water Act. In determining the amount of the loan fee, the Department shall consider: (1-4-06)T

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a. The Department's anticipated costs of administering the loan program for the upcoming fiscal year, including salaries and overhead; (1-4-06)T

b. Any Department costs related to providing technical assistance for the loan program for the upcoming fiscal year; and (1-4-06)T

c. The amount of money generated from loan fees in previous fiscal years available for use in the upcoming fiscal year. (1-4-06)T

03. Effect on Loan Interest Rate. The loan interest rate, as described in Subsection 050.05, will be reduced by the ~~amount~~ corresponding percentage of the loan fee. ~~(1-4-06)T~~(2-24-06)T

04. Payment of Loan Fee. The loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period. (1-4-06)T

0323. -- 039. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

050. LOAN OFFER AND ACCEPTANCE.

01. Loan Offer. Loan offers will be delivered to successful applicants by representatives of the Department or by registered mail. (1-1-89)

02. Acceptance of Loan Offer. Applicants have sixty (60) days in which to officially accept the loan offer on prescribed forms furnished by the Department. The sixty (60) day acceptance period commences from the date indicated on the loan offer notice. If the applicant does not accept the loan offer within the sixty (60) day period the loan funds may be offered to the next project of priority. (1-1-89)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director and upon signature by the authorized representative of the eligible applicant, the loan offer shall become a contract. Upon accepting a loan offer a eligible applicant becomes a loan recipient. The disbursement of funds pursuant to a loan contract is subject to a finding by the Director that the loan recipient has complied with all loan contract conditions and has prudently managed the project. The Director may, as a condition of disbursement, require that a loan recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with loan funds. No third party shall acquire any rights against the state or its employees from a loan contract. (5-3-03)

04. Estimate of Reasonable Cost. All loan contracts will include the eligible costs of the project. Some eligible costs may be estimated and disbursements may be increased or decreased as provided in Section 060. (5-3-03)

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05. Terms of Loan Offers. The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: (1-1-89)

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Title 39, Chapter 36, Idaho Code; and (5-3-03)

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; and (1-1-89)

c. Terms consistent with applicable state and federal laws pertaining to engineering reports, design and construction, including the Public Works Contractors License Act and the Public Contracts Bond Act, Chapter 19, Title 54, Idaho Code, and the federal Clean Water Act requirements for projects funded with loan moneys of federal origin; and (1-1-89)

d. Requirement for the prime engineering firm(s) and their principals retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases, whether or not such services or phases are state funded, until the certification of project performance is accepted by the Department; and (5-3-03)

e. The project shall be bid, contracted and constructed according to the current edition of Idaho Standards for Public Works Construction unless the qualifying entity has approved and adopted acceptable public works construction standards approved by the Department; and (5-3-03)

f. The loan interest rate for loans made during the state fiscal year beginning July 1 will be established by the Director. The interest rate will be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; and (3-30-01)

g. The loan fee pursuant to Section 032; and (1-4-06)T

gh. All loans must be fully amortized within a period not to exceed twenty (20) years after project completion. The loan contract will contain a schedule of loan repayments stating the due dates and the amount due. The borrower may elect for either a schedule of semi-annual or annual repayments at the time the loan is finalized; and (3-30-01)

hi. Repayment default will occur when a scheduled loan repayment is thirty (30) days past due. If default occurs, the Department may invoke appropriate loan contract provisions and/or bond covenants. (5-3-03)